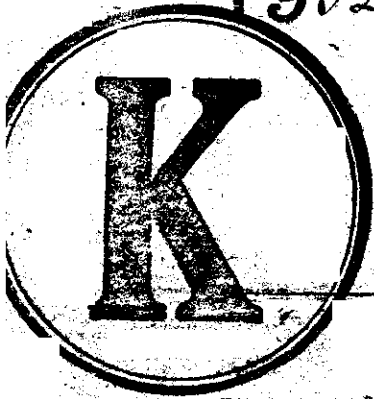


1952.



File No. O. Finance/52

P 18F

Legal Deptt.

A BRANCH

Subject:— Opinions under the
Bombay Finance Act, 1932

File No. O. Finance/52

373-A

Legal Department File No.0 Finance/52

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*Ans
2/6*

Office of the R.L.A.

By Government Notifications in the L.S.G. and P.H.D., dated 1st August 1950 and 7th February 1951 issued in exercise of the powers conferred by sub-section (3) of section 3 of the Bombay Provincial Municipal Corporations Act, 1949, the Government of Bombay altered the limits of the Poona Municipal Corporation so as to include therein some areas which were not included formerly either in Poona City Municipality or the Poona Suburban Municipality. The Municipal Commissioner proposes to recover urban immoveable property tax in these areas; and has raised the question whether it is not necessary to amend section 20 of the Bombay Finance Act, 1932, before doing so. The Secretary, Finance Department considers that in view of para 1 in App. IV to the Bombay Provincial Municipal Corporations Act, 1949, no such amendment is necessary. The R.L.A. is requested to advise.

2. Under section 20(ii) of the Bombay Finance Act, 1932, Pt. VI of the Act which provides for the levy of Urban immoveable property tax, extends inter alia to the limits of the Poona City and Poona Suburban Borough Municipalities. These municipalities are no longer in existence and their areas have merged in the areas of the Poona Municipal Corporation. Para 1 of App. IV to the Corporations Act provides that references in any enactment in force on the date immediately preceeding the constitution of the Corporation to Municipal districts, Municipal Boroughs, Municipalities or borough municipalities shall, unless a different intention appears, be construed as references to the City or to the Corporation of the said City, as the case may be. This provision is of a transitory nature intended to overcome the difficulties that might crop up at the time a Corporation is constituted (vide Sec.493 of the Act). It cannot be interpreted to have the effect of substituting reference to the

to the Poona Municipal Corporation in section 20(ii) of the Finance Act, 1932, in place of the two Municipalities referred to there. Nor can this provision be said to extend Pt. VI of the Finance Act to the areas subsequently added to the limits of the Corporation. In order to give effect to the Commissioner's proposal amendment of the Finance Act would be necessary.

Sgd: P. M. ^{15/3}Lad

Remembrancer of Legal Affairs.

U.R. to P.D. No.4070, dated the 17th March 1952.

KVV.
15/6.
4 cc.

Office of the R.L.A.

Section 6(3) of the Bombay Finance Act, 1932, provides that the licensee shall be entitled for his cost of collection of duty to a rebate of such percentage as may be determined by the Government on the amount of the duty collected and paid by him under sub-section(1). "Rebate" is a deduction or drawback from a stipulated payment, not taken out in advance of payment, but handed back to the payer after he has paid the full stipulated sum." Black's Law Dictionary p.1499. It is because the licensee is to get a rebate that the expression "percentage on" is used. The difference between "percentage of" and "percentage on" is this that a percentage of a sum means a portion of that sum, whereas a percentage on a sum signifies the measure of what the sum in question will yield, and for that purpose naturally the full stipulated sum must first be calculated and paid. In both cases, however, it is the percentage, i.e., a certain rate or proportionate per cent., an amount reckoned as so much in the hundred, and not on absolute sum. Since the rebate is a percentage on the duty collected, it must always be a rate per hundred of the duty collected and cannot be further circumscribed by an upward maximum limit in absolute numbers.

Sgd. P. M. Ld.
15/3
Remembrancer of Legal Affairs.

U.R. to P.D. No.8203, dated 16th May 1952.

KVV.
15/6
4 es.

Legal Department.

At present, rebate for the cost of collection of electricity duty is given to the electric supply companies at different rates of percentage on the amount of the duty collected and paid and different maximum amounts of such rebate are fixed in the case of different companies.

2. To regularise the present position, it is expedient to amend section 6 of the Bombay Finance Act, 1932, suitably. Specific powers may be taken to fix different percentages and different maxima of the rebate for different companies. Such a provision would be assailed as offending against article 14, unless the different rates and maxima can be justified as having a reasonable basis for classification.

Sgd. J.R. Dhurendhar

22/8

Additional Secretary to Government

U.R.to P.D. No. 13881, dated the 26th August 1952.

KVV.
15/8
4 cc.

Office of the R.L.A.

The R.L.A. has expressed the view on more than one occasion that the trustees of the premises in question are liable to pay the urban immovable property tax under clause (c) of section 26(2) of the Bombay Finance Act, 1932 (Vide R.L.A.'s opinions Nos. 8810, dated 16.9.48, 444-Conf1. dated 19.7.1949, 6091, dated 4-8-1950 etc). The Commissioner of Labour should not therefore have complied with the demand of the Corporation in that behalf. It appears that the Milk Commissioner who was previously occupying the premises did not pay the u.i.p. tax. The amount has thus been paid by the Commissioner of Labour under mistake. The first question raised by Secretary, Finance Department is whether the amount can be recovered from the Corporation by making deductions from the amount of future municipal taxes. The Secretary, Finance Department does not favour this remedy. Under the Bombay Finance Act, 1932, the Corporation collected the tax on behalf of the State Government (Vide section 24). The amount must have been credited to Government. There would not therefore appear much point in asking the Corporation to refund the money except as regards the collection charges. Nor would it appear feasible to deduct the amount from the compensation payable to the landlord, because the landlord was required to pay the amount of the tax to the Corporation and not to Government. Besides section 108(g) of the Transfer of Property Act, cannot be pressed into service for recoupment out of compensation as that provision does not apply to requisitioned property. The best course to adopt in these circumstances would be to inform the Corporation about the wrong payment, to ask it for the refund of the collection charges in respect thereof and to take steps to collect the amount from the trustees of

the Institute from whom the amount in fact
was due.

Sgd. P.M. Lad
10/10
Remembrancer of Legal Affairs.

U.R. to F.D. No. 16802/A, dated the 11th October, 1952.

KVV.
15/6
4 cs.

Section 7(2) of the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945, provides that the State Government may, from time to time, by notification in the Official Gazette, add to, alter or amend the entries in Schedule C and the said Schedule shall on the issue of such notification be deemed to be amended accordingly. It is proposed by F.D. to amend the Schedule by adding the words "(except Part VI thereof)" after the words "The Bombay Finance Act, 1932" and that Department is of opinion that thereupon the words "City of Bombay" occurring in clause (i) of section 20 in Part VI will automatically be read as "Greater Bombay" and that the territories mentioned in clauses (ii), (iii) and (iv) which are included in the Greater Bombay will be automatically deleted from those clauses.

This view does not appear to be correct. Even assuming that the power of adding to, altering or amending the entries includes the power of so altering or amending the entry as to exclude a part of the enactment, the result of a notification under sub-section (2) of section 7 would be to take the enactment - in this instance, Part VI of the Bombay Finance Act, 1932 - out of the purview of sub-section (2) of section 3. That would not be of any help unless sub-section (1) of section 3 is also attracted; for sub-section (2) is an exception to sub-section (1). To take a case out of the exception does not automatically bring it within the rule; more so in this case because the rule itself is inapplicable to this case. The rule as contained in sub-section (1) is that such provisions, or such parts of the provisions, -

(a) of any enactment relating to any of the matters enumerated in Lists II and III in the Seventh Schedule to the Government of India Act, 1935, made by any authority in British India, or

(b)

(b) of any notification, order, scheme, rule, form or by-law issued, made or prescribed under any enactment of the class referred to in clause (a),

as were in force immediately before the commencement of this Act in the area comprised in the City of Bombay ; . . . but not in the other areas comprised in Greater Bombay, are hereby declared to be in force in all the areas comprised in Greater Bombay. In this particular case Part VI of the Bombay Finance Act, 1932, was in force in the other areas comprised in Greater Bombay which are all mentioned in clauses (ii), (iii) and (iv) of section 20. The scheme of sub-section (1) is that, if a law was in force only in the City of Bombay, then it could be extended to other areas which were later on added to the City of Bombay for the purpose of making it Greater Bombay. But the inconvenience of extending this rule to a case where the law itself was in terms in force in the other areas is obvious; for, in that case a conflict would immediately arise regarding the true scope and extend of its application. That conflict is well illustrated in this case in respect of the different definitions about "annual letting value" and "property tax." For these reasons, therefore, the proposal to extend the Bombay Finance Act, 1932, as it applied to the City of Bombay to the other areas now comprised in Greater Bombay by resort to a notification under sub-section (2) of section 7 of the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945, is not legally feasible.

If the intention is to give relief in terms of the assurance given by the Minister for Finance, the proper course would be to issue suitable notifications under the Bombay Finance Act, 1932, for the respective areas. Notifications on these lines as settled in

consultation....

consultation with Shri. Nackerani, D.S., F.D., are
enclosed herewith.

Sgd. P.M. Lad /
22/9
Remembrancer of Legal Affairs.

U.R. to F.D. No. 15609/B dated the 23rd September 1952.

KVV.
15/6
4 cc.

NOTIFICATION.

Finance Department.
Bombay Castle, September 1952.

Bombay Finance
Act, 1932.

No.9326-XII(2) -- In exercise of the powers conferred by section 22 of the Bombay Finance Act, 1932 (Bom. II of 1932) and in supersession of Government Notification, Finance Department No.9326-ST(1) dated the 1st April 1949, as amended from time to time, in so far as it relates to the areas specified herein, the Government of Bombay is hereby pleased to declare and notify that with effect from the 1st day of October 1952, the rate at which the Urban Immovable Property Tax shall be levied and paid to the state Government in the areas specified below shall be as follows:

(A) On buildings and lands in the areas specified in the Schedule I appended, the annual letting value of which-

(i) does not exceed Rs.2000. 2½ per cent. of the annual letting value of such buildings or lands.

(ii) exceeds Rs.2,000 5 per cent. of the annual letting value of such buildings or lands.

(B) On buildings and lands in the areas specified in Schedule II appended hereto, the annual letting value of which-

(i) does not exceed Rs.1000 3½ per cent. of the annual letting value of such buildings or lands.

(ii) exceeds Rs.1,000. 7 per cent. of the annual letting value of such buildings or lands.

SCHEDULE I.

- (1) The City of Bombay.
- (2) The limits formerly included in the Municipal Borough of Bandra, Parle-Aandheri, Ghatkepar-Kirol and Kurla,
- (3) The limits formerly included in the Municipal district of Juhu;
- (4) The limits formerly included in the notified Area of Chembur.

SCHEDULE II.

- (1) The Thane and Ahmedabad Municipal Boroughs.
- (2) The Maled, Kandivall and Borivall notified areas.
- (3) The Mulund and Bhayander villages in the Thane District and the Sabarmati village in the Ahmedabad District; and
- (4) The Ahmedabad, Poona and Kirkee Cantonments.

By order of the Governor of Bombay

Secretary to Government.

NOTIFICATION

Revenue Department,
Bombay Castle, September 1952.

Bombay Finance
Act, 1932.

No.9326-XII -- In exercise of the powers conferred by section 29 of the Bombay Finance Act, 1932 (Bom. II of 1932) and in modification of Government Notification, Revenue Department No.1031/39, dated the 4th July 1939, in so far as it relates to the areas specified herein, the Government of Bombay is pleased to make the following rule, viz.:-

The Urban Immovable Property Tax shall be remitted entirely in respect of the following:-

- (1) lands and buildings in the area specified in Schedule I hereto appended, the annual letting value of which is less than Rs.500, and
- (2) lands and buildings in the areas specified in Schedule II appended hereto, the annual letting value of which is less than Rs.200.

SCHEDULE I.

- (1) The City of Bombay.
- (2) The limits formerly included in the Municipal Borough of Bandra, Parel-Anderi, Ghatkoper-Kirol and Kurla;
- (3) The limits formerly included in the Municipal district of Juha;
- (4) The limits formerly included in the notified Area of Chamber.

SCHEDULE II.

- (1) The Thane and Ahmedabad Municipal Boroughs.
- (2) The Malad, Kandivali and Borivali notified areas.
- (3) The Mulund and Bhayander villages in the Thane District and the Gabaramati village in the Ahmedabad District; and
- (4) The Ahmedabad, Poona and Kirkee Cantonments.

By order of the Governor of Bombay,

Secretary to Government.

Under section 23(a) of the Bombay Finance Act, 1932, urban immoveable property tax shall not be leviable in respect of buildings and lands or portions thereof exclusively occupied for public worship or for charitable purposes. The expression "charitable purpose" has been considered in R.L.A.'s opinion No. 6112 dated 6th November 1936. As pointed out in that opinion, the following four heads, i.e. (1) the relief of poverty, (2) advancement of education, (3) advancement of religion, and (4) other purposes beneficial to the community not falling under any of the preceding heads, would constitute charitable purpose. It is true that in para 4 of that opinion it is stated that the expression "charitable purposes" in clause (a) of section 143(1) of the City of Bombay Municipal Act, 1888, may be taken as inclusive of the following purposes: relief of poverty, advancement of education or learning, relief of sickness or other physical distress, either in whole community or in one or more substantial sections of the community, and advancement of religion has been omitted. But this omission would not mean that the advancement of religion is excluded from charitable purpose. As stated therein, charitable purpose is interpreted as merely inclusive of these purposes. Consequently, the omission of advancement of religion in the interpretation of the expression "charitable purposes" in para 4 of that opinion would not matter anything. "Bequests for spreading Christianity or for the advancement of Christianity among infidels, for the maintenance of missionary establishments and the spread of the gospel are also charitable. So also gifts to institutions such as the Society for promoting Christian knowledge or the Church Missionary Society, or the Society for the Propagation of the Gospel in foreign parts" (see Tudor on Charity, p.33). It is, therefore, apparent that buildings used....

used for propagation of religion would be deemed to be used for a charitable purpose. Under article 25(1) of the Constitution right freely to profess, practise and propagate religion has been guaranteed. It would, therefore, be open to any individual or a society to be interested in the propagation of any religion in India. Consequently, to endow any building for the purpose of propagation of religion would not be unconstitutional and would fall under section 23(a) of the Bombay Finance Act, 1932. Such buildings would, therefore, be exempt from the levy of urban immovable property tax. Although Indian Statutes make distinction between religious and charitable purposes Pathshalas and other similar institutions imparting religious education may also be part of education in wider sense and therefore a charitable purpose.

Sgd. P.M. Lad

15/10

Remembrancer of Legal Affairs.

U.R. to R.D., No.17151/A, dated the 16th October 1952.

KVV.
15/6.
4 cc.

Office of the R.L.A.

Under section 23(a) of the Bombay Finance Act, 1932, urban immoveable property tax shall not be leviable in respect of the buildings and lands or portions thereof exclusively occupied for public worship or for charitable purposes. R.D. in its circular No.1006/39 dated 26th June 1952 has stated that buildings and lands used for residential purposes of monks, sadhus, etc., are not exempt from payment of urban immoveable property tax under section 23 (a) of the Bombay Finance Act unless such buildings and lands are allowed to be occupied by the poor and needy without charging any rent, irrespective of caste, colour, creed or religion. It appears that in the rules framed by the various municipalities exemption from property tax is given to buildings and lands used for religious or charitable purposes. The question raised for the R.L.A.'s consideration is whether the aforesaid R.D. circular applies to the property tax leviable by the municipalities in respect of buildings and lands occupied by monks, sadhus, etc.

Although section 23(a) of the Bombay Finance Act requires that the buildings and lands to be exempted from the urban immoveable property tax should be exclusively occupied for public worship or for charitable purposes, it would not make any difference to the legal position even if the word "exclusively" is not used in the rules of the municipalities, provided the rules clearly provide for exemption from the property tax of buildings and lands used for religious or charitable purposes. The main question would, therefore, be whether the buildings and lands used for residential purposes of monks, sadhus, etc., can be said to be used for a charitable purpose. In *Cocks v. Manners* (L.R.Vol. 12, p.575 (1871) Equity Cases), Sir John Wickens, V.C. at p.586 observed:

"A voluntary association of women for

the purpose of working out their own salvation by religious exercises and self-denial seems to me to have none of the requisites of a charitable institution, whether the word 'charitable' is used in its popular sense or in its legal sense. It is said, in some of the cases, that religious purposes are charitable, but that can only be true as to religious services tending directly or indirectly towards the instruction or the edification of the public; an annuity to an individual, so long as he spent his time in retirement and constant devotion, would not be charitable, nor would a gift to ten persons, so long as they lived together in retirement and performed acts of devotion, be charitable."

In that very case, however, the gift to the Community of Sisters at Felley Oak was upheld as a charitable gift on the ground that that was a voluntary association for the purpose of teaching the ignorant and nursing the sick. The underlying principle has been stated in Tudor on Charities at p.22 to be that a gift to a monastic institution is charitable if the recipient is bound to spend it upon purposes involving the instruction or edification of the public but not if it may be devoted to the support of persons living a purely contemplative life. Therefore, it will be a question of fact in each case whether the accommodation provided for monks and sadhus is merely intended for the benefit of such monks and sadhus leading a purely contemplative life or whether the institution also involves the instruction or edification of the public. Only in so far as monks and sadhus serve the cause of such instruction or edification, it may be possible to treat the purpose as a charitable purpose. Otherwise the view taken by R.D. would appear to be correct; and the position would be similar in respect of the levy of the property tax by the municipalities.

Sgd. P.M. Lad

27/11

Remembrancer of Legal Affairs.

U.R. to L.S.G.A P.H.D.No. 19842/A, dated 28th Nov. 1952